

SUPPLEMENT TO THE ENVIRONMENTAL ASSESSMENT
PREPARED FOR THE IMPLEMENTATION OF THE REASONABLE AND PRUDENT
ALTERNATIVE ON THE ISSUANCE OF THE MARINE MAMMAL PERMIT UNDER SECTION
101(a)(5)(E) MARINE MAMMAL PROTECTION ACT FOR THE CALIFORNIA/OREGON
DRIFT GILLNET FISHERY

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1.0 Introduction

On October 23, 2000, the National Marine Fisheries Service (NMFS) issued a Biological Opinion to authorize take of listed marine mammals under the Endangered Species Act (ESA) incidental to commercial fishing operations under section 101(a)(5)(E) of the Marine Mammal Protection Act for the California/Oregon (CA/OR) drift gillnet fishery. Under the Reasonable and Prudent Alternative (RPA) of the Biological Opinion, NMFS is required to issue regulations to implement time and area closures to protect leatherback and loggerhead sea turtles. On August 24, 2001, NMFS published an interim final rule implementing the time and area closure to protect leatherback sea turtles (66 FR 44549).

An Environmental Assessment (EA) dated August 13, 2001, was prepared for the rule that analyzed the impacts of the RPA on the human environment. This EA concluded that the implementation of the time and area closures will have no significant environmental impacts. The EA also considered the impacts of the RPA on Essential Fish Habitat (EFH), marine mammals, and protected species and found that the RPA will have no significant impact to EFH, marine mammals, or protected species. The original EA was prepared for the issuance of an interim final rule that included the loggerhead and leatherback sea turtle time and area closures. However, because the published interim final rule only included the leatherback sea turtle time and area closure, this supplemental EA is being prepared for the issuance of the rule to protect loggerhead sea turtles.

2.0 Purpose and Need

The purpose of the rule to implement the RPA identified in the October 2000 Biological Opinion is to address the incidental take of loggerhead sea turtles by the CA/OR drift gillnet fishery. This RPA consists of a time and area closure that would prohibit drift gillnet fishing in U.S. ocean waters off of southern California south of Point Conception (34° 27' N) and east of the 120° W longitude from August 15 to August 31, and from January 1 to January 31, during El Niño events. The implementation of the RPA is determined necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerhead sea turtles.

3.0 Results of 2001 Fishing Season

The CA/OR drift gillnet fishery target species include swordfish, thresher shark and mako shark whereas non-target species include other billfish and blue shark. Under State of California Fish and Game Code, the CA/OR drift gillnet fishery is closed within 200 nautical miles (nmi) of the coastline from February 1 through April

30. From May 1 through August 14, drift gillnets cannot be used in ocean waters within 75 nmi from the mainland coastline. However, a vessel operator may land swordfish or thresher shark if the fish were taken in waters more than 75 nmi from the mainland shore. From August 15 through January 31, swordfish can be taken within 75 nmi. The majority of the fishing effort takes place from October through December of each season.

During the 2001 fishing season (May 1 through January 31), NMFS observed 323 sets (Figure 1). During these sets, NMFS observed 8 short-beaked common dolphins, 1 long-beaked common dolphin, 6 northern right whale dolphins, 2 Pacific white-sided dolphins, and 1 loggerhead sea turtle (Figure 2) incidental to commercial fishing operation of the CA/OR drift gillnet fishery. Based on preliminary estimates, the annual marine mammal mortality and serious injury take levels are below at least 25% of the Potential Biological Removal levels for each species. The loggerhead sea turtle was released alive by the CA/OR drift gillnet fishery in ocean waters off of San Diego, California. This entanglement occurred on August 24, 2001, at 32E06.1' N, 118E07.8' W.

Although there have been reports of loggerhead sea turtles occasionally stranding and of sightings of loggerhead sea turtles off of southern California during years when there is not an El Niño event, this was the first loggerhead sea turtle entanglement that NMFS observed outside of an El Niño event. Loggerhead sea turtles and their prey are more abundant off of southern California during El Niño events when water temperatures are generally warmer. Thus, there is a significant increase in the likelihood of a loggerhead entanglement during El Niño events. In addition, water temperatures were warmer than normal off southern California during July 2001, which may explain why the loggerhead sea turtle was in the area and caught. From 1990 to 2001, NMFS observed a total of 353 sets between August 15 and August 31, south of Point Conception. During El Niño conditions, NMFS observed 90 sets and 5 loggerhead sea turtle entanglements during this time period. During years when El Niño conditions were not present, NMFS observed 167 sets and 1 loggerhead sea turtle entangled between August 15 and August 31. Based on this information, NMFS believes that loggerhead sea turtles are less likely to be off southern California outside El Niño events and that an entanglement of an additional loggerhead sea turtle outside of an El Niño event is not likely or anticipated.

4.0 Changes to the CA/OR Drift Gillnet Fishery

On August 24, 2001, the Pacific Leatherback Conservation Area time and area closure prohibiting fishing by CA/OR drift gillnet vessels from August 15 through November 15 became effective. The area is

bounded by straight lines connecting the following coordinates in the order listed:

- (A) Point Sur (36°18.5' N) to 34°27' N 123°35' W;
- (B) 34°27' N 123°35' W to 34°27' N 129° W;
- (C) 34°27' N 129° W to 45° N 129° W;
- (D) 45° N 129° W to the point 45° N intersects the Oregon coast.

NMFS notified vessel owners and operators by certified mailings, Channel 16 radio broadcasts by the U.S. Coast Guard, and mandatory skipper workshops. At the skipper workshops, NMFS also presented the time and area closure to protect loggerhead sea turtles.

After implementation of the Pacific Leatherback Conservation Area, NMFS observed five sets inside the closed area (Figure 3). These five sets were made by a vessel that had already departed port prior to the implementation of the closure and was not aware of the effective date until the vessel operator attended the Portland skipper workshop on August 29, 2001. Other than the five observed sets, there were no other sets inside the Pacific Leatherback Conservation Area, during the fishing season. This lack of fishing effort along the central and northern California coast is a change to the amount of fishing effort that occurred in this area prior to the implementation of the Pacific Leatherback Conservation Area. In addition, based on preliminary fishing effort data provided by the California Department of Fish and Game, there appears to an overall reduction of approximately 300 sets for the year. Also, based on observer data, it appears that the fishing effort has shifted to the south compared with the areas where vessels fished prior to the implementation of the Pacific Leatherback Conservation Area.

5.0 Cumulative Impacts

The time and area closure south of Point Conception and east of the 120°E W longitude from August 15 to August 31, and from January 1 to January 31, during El Niño events, is expected to cause a reduction in overall fishing effort during this time period. Therefore, the cumulative impacts to the environment is expected to be beneficial resulting in a reduction of target and non-target species taken by the fishery and will have no impact to EFH.

6.0 Finding of No Significant Environmental Impact

National Oceanic and Atmospheric Administration (NOAA) Order (NAO) 216-6 (revised May 20, 1999) provides 17 criteria for determining the significance of the impacts of an action using the guidance to determine the significance on general and fishery management actions. These criteria are discussed below:

1. Can the impacts of the action be both beneficial and adverse?

The action is expected to be beneficial to loggerhead sea turtles by prohibiting CA/OR drift gillnet fishing vessels from fishing east of the 120°E W longitude, south of Point Conception to the Mexico border, during local El Niño conditions when the majority of the observed loggerhead sea turtle entanglements have occurred. Also, the action is expected to cause a decrease in the total gross revenues of the CA/OR drift gillnet fishery by decreasing the amount of time and the area where drift gillnet vessels may fish.

2. To what degree does the action affect public health or safety?

The action is not expected to affect public health or safety. Fishermen must monitor weather conditions and oceanographic conditions to determine whether it is safe for them to depart on a fishing trip. The time and area closure does not change or shift this responsibility. The same decisions must be made as to whether it is safe to depart on a fishing trip considering environmental and vessel conditions.

3. Are there unique characteristics of the geographic area in which the action can affect?

Because the action prohibits drift gillnet fishing in ocean waters, there are no unique characteristics of the geographic area that will be affected by the action.

4. To what degree are the action's effects on the human environment likely to be highly controversial?

The action is not likely to have a highly controversial effect on the human environment. The time and area closure is expected to have a beneficial effect on the marine environment by limiting the amount of fishing effort that may occur in ocean waters south of Point Conception. As a result, the action is also expected to cause a reduction of total gross revenues to drift gillnet commercial fishing vessel owners and operators that typically fish inside the area during the time period of the closure. This reduction will partially depend on whether vessels choose to participate in other fisheries or fish in other open areas.

5. To what degree are the effects of the action highly uncertain or involve unique or unknown risks?

The effects of the action are not expected to be highly uncertain

or involve unique or unknown risks because loggerhead sea turtles have been taken by CA/OR drift gillnet vessels during the time and area closures. NMFS believes the time and area closure will decrease the likelihood that loggerhead sea turtle will be entangled during commercial fishing operations.

6. To what degree can the action establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

The action to implement time and area closures to protect loggerhead sea turtles is not new and would not be establishing a precedent for future actions. In addition, the rule is not expected to have significant effects or represent a decision in principle about a future consideration.

7. Can the action be individually insignificant but have cumulatively significant impacts? Can the action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The action is not expected to have individually insignificant effects but have cumulatively significant impacts because the time and area closure will not eliminate the CA/OR drift gillnet fishery targeting thresher shark and swordfish. Neither target nor non-target species will be adversely affected as this action will favorably affect all species in the action area.

8. To what degree can the action adversely affect entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?

The action will not cause loss or destruction of significant scientific, cultural, or historic resources because there are no known historic places within the ocean waters of the area closure.

9. To what degree can the action adversely affect endangered or threatened species, or their critical habitat as defined under the ESA?

The action will reduce the likelihood of adversely affecting endangered or threatened species, or their critical habitat as defined under the ESA. The action implements the RPA in the October 2000 Biological Opinion on the issuance of the marine mammal permit under section 101(a)(5)(E) of the Marine Mammal Protection Act to incidentally take marine mammals listed as

threatened or endangered under the ESA. Specifically, the time and area closure is designed to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead sea turtle population.

10. Does the action threaten a violation of Federal, state, or local law for environmental protection?

The action does not threaten a violation of Federal, state, or local law for environmental protection and is needed to prevent the violation of the ESA. The loggerhead sea turtle is not listed under the California Endangered Species Act.

11. Can the action result in the introduction or spread of a nonindigenous species?

The action will not result in the introduction or spread of a nonindigenous species because drift gillnet vessels are already allowed to fish inside this ocean area. This action will prohibit fishing activity by CA/OR drift gillnet vessels in areas where and times when loggerhead sea turtles are expected to be present.

12. Can the action be reasonably expected to jeopardize the sustainability of any target or non-target species that may be affected by the action?

The action is not likely to jeopardize the sustainability of any target or non-target species. More likely, the time and area closure will reduce the number of target species landed and non-target species caught because of the overall decrease in fishing effort.

13. Can the action be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans?

The action involves time area closures which restrict fishing (reducing effort) and thus is not expected to cause substantial damage to the ocean and coastal habitats and/or Essential Fish Habitat.

14. Can the action be reasonably expected to have an adverse impact on marine mammals?

The action is expected to have a beneficial impact on marine mammals by reducing the area and time that fishing gear may be

set in the water.

15. Can the action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area because it will be reducing the amount of fishing effort inside the closed area.

16. Are significant social or economic impacts interrelated with significant natural or physical environmental effects?

The action is expected to cause a reduction in the total gross revenue of the vessel operators who fish in the area and time of the closure during El Niño conditions. Economic impacts could be reduced if fishing effort shifts to areas that remain open to fishing or if vessel operators decide to switch over to another fishery. However, the impacts to the natural and physical environment are not expected to be significant because the time and area closure is expected to reduce the likelihood of the CA/OR drift gillnet fishery taking target and non-target species, including animals listed under the ESA.

FONSI Statement

In view of the analysis presented in this document and in the EA on the Implementation of the Reasonable and Prudent Alternative on the Issuance of the Marine Mammal Permit under Section 101(a)(5)(E) of the Marine Mammal Protection Act for the CA/OR Drift Gillnet Fishery, the rule to implement the time and area closure identified in the October 2000 Biological Opinion will not significantly affect the quality of the human environment, with specific reference to the criteria contained in Section 6.02 of NOAA Administrative Order NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (NEPA). Accordingly, the preparation of an Environmental Impact Statement for the action is not necessary.

Assistant Administrator for
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Date